

Application No. 10/009,263
Amdt. dated June 23, 2003
Reply to Office Action of January 22, 2003
Docket No. 4504-1025

REMARKS/ARGUMENTS

The specification has been amended to make editorial changes to place the application in condition for allowance at the time of the next Official Action.

A proposed drawing correction is submitted for Figures 1, 4, 9, 12, 15 and 19 to address the drawing objection noted in the Official Action and so that the drawings are consistent with the specification.

Claims 30-56 were previously pending in the application. Claims 30-56 are canceled and replaced with new claims 57-77. Applicant would like to thank the Examiner for indicating allowable subject matter in claims 37, 39, 48, 49 and 50. In reliance thereon, claim 37 is rewritten in independent form as new claim 61 and claim 39 is rewritten in independent form as new claim 76.

The new claims are believed to address the 35 USC §112, second paragraph rejection set forth in the Official Action.

Claims 30-33, 40, 41, 43, 44, 51 and 53-55 are rejected as anticipated by GHIRALDI 5,548,967. Claims 30-33, 36, 41, 43, 44, 51, 54 and 55 are rejected as being anticipated by FLESSNER 5,987,912. Claims 30-33, 38, 41, 43, 44, 47, 51, 54 and 55 are rejected as anticipated by WESTLING 2,586,893. Claims 30-33 are rejected as unpatentable over RODRIGUES WO 90/05098. Claims 34,

35, 42, 45-47, 55 and 56 are rejected as unpatentable over GHIRALDI.

Reconsideration and withdrawal of the rejections are respectfully requested because the references do not disclose or suggest that gas moves up an adjacent pair of side walls and down an opposing adjacent pair of sidewalls to form a pair of pathways, the pair of pathways crossing each other at the top without intersection of the pathways as recited in new claim 57 of the present application.

By way of example, Figures 7-10 of the present application show adjacent pairs of sidewalls 20, 21 and 22, 23. As seen in Figure 7, wall 22 is opposing wall 20 and wall 21 is opposing wall 23. As seen in Figure 8 and 9, the gas indicated by the arrows moves up through walls 20 and 23 (as seen in Figure 7 walls 20 and 23 are adjacent walls). As further seen in Figures 8 and 9, the gas moves down walls 22 and 21 (opposing adjacent pair as seen in Figure 7). As seen in Figure 10, a pair of pathways 32, 33 are formed. The pair of pathways cross each other at the top 30, 31 without intersection of the pathways. Accordingly, there are two pathways that originate from the bottom of the container. A first pathway goes up sidewall 20 across top 30 and down sidewall 22. A second pathway goes up sidewall 23 across top 31 and down sidewall 21.

GHIRALDI teaches cooling panels 14 in the top, bottom and three sides of the container 10. As seen in Figure 3 of GHIRALDI the panels in the top, bottom and sides are separate panels that do not form crossing pathways. Specifically, column 4, lines 45-53 of GHIRALDI teach that the panels extend about 80% of the wall surface and thus do not interconnect with each other to form pathways. Therefore, GHIRALDI does not disclose or suggest a pair of pathways crossing each other at the top without intersection of the pathways as recited in claim 57 of the present application.

FLESSNER at column 2, lines 38-42, for example disclose a plurality of nozzles 24 connected to air conduits for distributing air into the center of chiller 10. FLESSNER does not disclose or suggest a pair of pathways crossing each other at the top without intersection of the pathways as recited in claim 37 of the present application.

WESTLING at column 4, lines 50-53, for example, discloses a single circuit of air flow from the roof, the sides, to the floor, there being only two sides. WESTLING distinguishes ends 29 from sides 28. Ends 29 do not circulate air. Accordingly, WESTLING does not teach a pair of pathways crossing each other at the top without intersection of the pathways as recited in claim 57 of the present application.

RODRIGUES teaches a circular container where air flows up through the outer wall of the container and then flows down through the inner wall of the container. The air is then evacuated through the top of the container. Based on the circular configuration (or even rectangular configuration with hollow adjacent walls that are interconnected), there would only be a single flow path in RODRIGUES. RODRIGUES does not teach or suggest a pair of pathways cross each other at a top without intersection of the pathways as recited in claim 57 of the present application.

The above feature is missing from each of the cited references, is absent from the combination and thus is not obvious to one of ordinary skill in the art.

Paragraph 13 of the Official Action states that Applicant's specification does not state the criticality of the recited passage pattern or that such passage pattern leads to unexpected results and that Applicant does not specify the deficiencies of other passages used in the prior art.

Initially, Applicant would like to note that there is no rule, law or section in the Manual of Patent Examining Procedure that requires a showing of criticality or unexpected results and specifying the deficiencies of the prior art.

However, MPEP §2143 does state that to establish *prima facie* case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ 2d 1438 (Fed. Cir. 1991).

As noted above, none of the cited references teach a pair of pathways crossing each other at the top without intersection of the pathways as recited in claim 57 of the present application and as shown in Figure 10 of the present application, for example. Accordingly, there is neither a teaching or suggestion to make the proposed modification nor a reasonable expectation of success found in the prior art. Therefore, a *pima facie* case of obviousness has not been established and thus claim 57 is believed patentable over the cited prior art.

New claim 58 recites that gas moves up all side walls to the top, the top being apertured so that the gas returns to the base through the body of the container.

The closest reference to this recitation would be RODRIGUES. However, RODRIGUES vents the gas to the outside and does not return the gas to the base through the body of the container as recited in new claim 58. All of the claimed limitations are not taught or suggested by the prior art references and the reasonable expectation of success is not found in the prior art. Accordingly, a *prima facie* case of obviousness is not established as to claim 58 and thus claim 58 is also believed patentable over the cited prior art.

New claims 59 and 60 depend from claim 58 and further define the invention and are also believed patentable over the cited prior art.

New claim 62 recites a gas moving means provided in the base of the container to move gas from the base to the ducts in at least one side wall and to draw gas from at least one side wall to the base.

Again, RODRIGUES is the closest reference because RODRIGUES is the only reference that teaches a gas moving means in the base. However, RODRIGUES teaches evacuating all the gas from the top and does not teach or suggest drawing gas from at least one sidewall to the base as recited in claim 62. Since the closest prior art reference does not teach or suggest all of the claim limitations, a *prima facie* case of obviousness has not been established.

New claim 63 recites a gas moving device arranged to direct a gas through four side walls into a top and through the side walls into a base.

By way of example, page 8, lines 7-16 of the present application disclose that the fan forces air up two walls across the roof, down two walls and back to the fan that is completing an air distribution cycle. Because the air is evenly forced through all of the walls, heat transfer is accurately controlled. This construction forms essentially a cool gas blanket to insulate the contents in the container from the outside ambient air.

As noted above, GHIRALDI teach that the panels only cover 70-80% of the wall surfaces. In addition, as seen in Figure 2 of GHIRALDI side 12 does not include any ducts.

FRESSNER teaches a plurality of separate ducts that direct gas through nozzles in panels of a chiller into the body of the chiller. The ducts of FRESSNER are not arranged to direct gas through the sidewalls into the top and through the sidewalls into the base as recited in claim 63.

WESTLING teaches flow of air around two sides of the chamber. WESTLING does not teach or suggest that air flows in ducts on the ends of the chamber. Accordingly, WESTLING does not teach ducts within the base, the four sidewalls and the top as recited in the claim 63 of the present application.

RODRIGUES sends air from the ducts into the inner body of the container. RODRIGUES does not teach or suggest a gas moving device arranged to direct gas through the sidewalls into the top and through the sidewalls into the base as recited in claim 63 of the present application.

The above noted features are missing from each of the references, are absent from the combination, and thus are not obvious to one having ordinary skill in the art.

Claims 64-72 depend from claim 63 and further define the invention and are also believed patentable over the cited prior art.

New claim 73 recites a method of cooling a container comprising directing a first flow of gas up or down through one side of the container and allowing the gas to return down or up through another side and directing a second flow of gas up or down through yet another side of the container and allowing the gas to return down or up through still yet another side wall so that the first flow of gas and the second flow of gas are separate in the walls.

Claim 73 is directed to the method of flowing gas to cool the container in the flow pattern shown in Figures 2 and 8-10 of the present application, for example as discussed above with respect to claim 57. Accordingly, the comments above regarding claim 57 are equally applicable to claim 73.

New claims 74 and 75 depend from claim 73 and further define the invention and are also believed patentable over the cited prior art.

New claim 77 recites that the base is positioned on a pallet or the base includes a pallet configuration.

By way of example, Figure 2 of the present application shows a base 1 that is separate and distinct from the bottom part 2.

Each of the references only teach a bottom part and not that the base is positioned on a pallet or the base includes a pallet configuration. In addition, one of ordinary skill in the art would understand that a pallet is a portable platform such that the walls can be removed from the base.

By way of further explanation, an object of the present invention is to have a pallet-sized container that can be easily and sufficiently cooled to prevent variations in temperatures throughout the interior of the container and so that the walls can be removed and destroyed if necessary, allowing only the base part to be return shipped in use. As seen in Figures 21A-N of the present application, the container is easily manufactured by folding corrugated cardboard into a U-shape and placing the cardboard over the items to be cooled (that are stacked on a pallet). As seen in Figure 21G, only half of the pallet is covered. Accordingly, a second cardboard sheet is folded into a

U-shape and placed over the first sheet as seen in Figure 21H. The finished product as seen in 21I can then be covered by insulation as seen in Figures 21J-L. Since the bottom of the pallet 1, as seen in Figure 1, has blower 13, air is circulated up through the sidewalls 20, 23 and over the tops of the container and down through sidewalls 21, 22. Since the pieces of cardboard overlap, two separate air pathways are formed as seen in Figure 10. Therefore, the entire product is covered with the flow of air to insulate the contents from the outside ambient air.

Each of the references at best has a single air flow passage and does not "blanket" the product to be cooled (or heated).

Accordingly, it is believed that the new claims avoid the rejections under §102 and 103 and are allowable over the art of record.

In view of the present amendment and the foregoing remarks, it is believed that the present application has been placed in condition for allowance. Reconsideration and allowance are respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

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The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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